

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
AMARILLO DIVISION

SPECTRUM WT, *et al.*,  
*Plaintiffs,*

v.

WALTER WENDLER, *et al.*,  
*Defendants.*

No. 2:23-cv-00048

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**DEFENDANT WENDLER'S TRIAL BRIEF**

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Defendant Walter Wendler, in his official capacity as President of West Texas A & M University, files his Trial Brief as follows:

In 2023, this Court denied the preliminary injunction sought by Spectrum in its Memorandum Opinion and Order. (ECF No. 59) dated September 21, 2023. Document and deposition discovery in this case, largely preadmitted into evidence at trial, has only made the shortcomings of Plaintiff's case even more plain. Plaintiff falls well short of carrying its burden to show entitlement to any relief against Defendant Walter Wendler.

**I. THE EVIDENCE WILL SHOW PLAINTIFF'S CONDUCT IS NOT CONSTITUTIONALLY PROTECTED SPEECH.**

**A. Spectrum's proposed drag shows at Legacy Hall in 2023 and 2024 had insufficient expressive content for First Amendment protection.**

Spectrum in 2023 wanted to hold a drag show at Legacy Hall, part of the Jack B. Kelley Student Center on the campus of West Texas A & M University ("WTAMU"). President Wendler cancelled the show at Legacy Hall, and Spectrum held the drag show in Amarillo.

Spectrum claims the 2023 drag show was conduct protected under the Free Speech Clause of the First Amendment. The Supreme Court nevertheless has made it clear:

We cannot accept the view than apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in it intends thereby to express an idea.

*United States v. O'Brien*, 391 U. S. 367, 376 (1968). Conduct merits protection as speech only if "intent to convey a particularized message was present and . . . the likelihood was great that the message would be understood by those who viewed it." *Texas v. Johnson*, 491 U. S. 397, 404 (1989).

Barrett Bright, the former President of Spectrum who held that position in 2023 and 2024, testified that the 2023 drag show at Legacy Hall was his idea. What was Spectrum's expressive message that it intended to convey by the drag show?

The message of the show was – well, it depends on each of the performers' own personal message, because they are performing on stage and they all have their ideas of what they want to say.

Bright Dep. 51:8–14. Spectrum *had no expressive message* it intended to express through the 2023 or 2024 drag shows (much less a particularized message). Spectrum had general *purposes* for holding a drag show: to raise money for the Trevor Project and generally express support for LGBTQ+ students on the WTAMU campus. B. Bright Dep. 51:15–17. But general purposes or motivations for conduct are not particularized expressive messages.

Moreover, there is no evidence that “the likelihood was great that the message would be understood by those who viewed it.” *Texas v. Johnson*, 491 U. S. at 404. “In order for a message to be delivered by conduct, it must, in context, be reasonably apprehended by viewers.” *Cabrol v. City of Youngsville*, 106 F.3d 101, 109 (5th Cir. 1997). But neither Mr. Bright nor anyone else can offer more than speculation on that essential element of Spectrum’s claim.

**B. Spectrum admits it has no expressive message it intends to convey through a proposed 2026 drag show.**

Because Spectrum seeks only forward-looking relief at trial, the proposed 2023 and 2024 drag shows are relevant only for their “predictive value” as to future events. And the relevant future event at issue is the April 2026 drag show Spectrum recently applied to hold at Legacy Hall. As to that 2026 proposed drag show, Plaintiff Spectrum intends to convey *no particularized or specific expressive message*. Spectrum President Fanelli testified:

Q Does Spectrum intend to convey any particular message through its proposed drag show in April of 2026?

A So art is subjective. Every single performer is a separate artist – a separate artis. Each of the performances could mean something different to them. Spectrum isn’t to say what those things mean, because, once again, art is objective. So whatever a particular performer is trying to convey, they are free that said message.

Q And at this point, Spectrum doesn’t know who those performers are, right?

A Not yet . . . .

Q Okay. Now as part of your previous answer, you noted that whatever performances occur in the proposed 2026 drag show, they may be perceived as having many different messages or meanings to the audience; is that correct?

A Yes.

Q Is it fair to say that Spectrum does not intend by its proposed 2026 drag show to express any specific message? . . .

A **We are not trying to convey a specific message, no.**

J. Fanelli Dep. 35:18–36:18; 39:15–40:20 (emphasis added). Spectrum has no evidence that the audience at the 2026 drag show would understand any message(s) of the unknown performers.

## II. **LEGACY HALL HAS BEEN AND IS A LIMITED PUBLIC FORUM.**

President Wendler became President of WTAMU in 2016. The 2017 Procedures and Guidelines for the Jack B. Kelley Student Center (which includes Legacy Hall) stated:

The JBK Student Center staff reserves the right to deny space usage for any group/event that is programmatically or operationally impractical to accommodate or that **conflicts with the University’s mission or policies.**

The JBK Student Center reserves the **right to cancel**, interrupt, or terminate any event in the interest of public safety, noncompliance with university policies, or **if the event can be viewed as inappropriate or not consistent with the mission of West Texas A&M University.**

Def’s Ex. 4 at 11 (emphasis added).

The 2023 document included precisely the same reserved right. Defendant’s Exhibit 3 at 4 (emphasis added). Spectrum didn’t bother to review the relevant Procedures and Guidelines when it applied its 2023 or 2024 drag shows at Legacy Hall, but Mr. Bright acknowledged that “that is what the document says.” B. Bright Dep. 129: 16–130:8. Thus, President Wendler had the right to cancel the proposed 2023 and 2024 drag shows based on his good faith judgment that they were “inappropriate and not consistent with the mission of West Texas A&M University”. President Wendler’s March 20, 2023, email to the WTAMU community spelled out his view that the proposed drag show was demeaning and denigrating to women. A core value of WTAMU is “Respect” for the dignity of all. President Wendler had the right to enforce the educational policies and values in a viewpoint neutral manner. *Christian Legal Soc’y Chapter of Univ. of Cal. v. Martinez*, 561 U. S. 661 (2010).

Spectrum of course disagrees with President Wendler’s judgment. That is their right. But they do not deny that President Wendler exercised his judgment in good faith. His view that drag shows are comparable to blackface minstrelsy is one Spectrum admits is “a popular view”, shared

even by the *mother and uncles of Spectrum's President*. Fanelli Dep. 101:10 to 101:18, 103 to 103:16. Under the untenable view of the First Amendment held by Spectrum, a university president *must* allow a student group not only to present on campus sexualized drag shows, but also blackface minstrel shows, neo-Nazi celebrations of the Holocaust, and anti-LGBTQ+ rallies. Fanelli Dep. 137:6 to 140:23. As to the proposed Spectrum 2026 drag show, Spectrum WT is aware that WTAMU reserves the right to cancel any event it deems inappropriate or inconsistent with its educational mission. Fanelli Dep. 116:8 to 118:24.

**III. President Wendler did not engage in viewpoint discrimination against Spectrum WT and will not do so.**

Before and after the proposed 2023 and 2024 drag shows at Legacy Hall, Spectrum WT has engaged in dozens of events on the WTAMU campus and of the campus to pursue its purpose of support for LGBTQ+ students. Neither the University nor President Wendler has interfered in any way with those events or with Spectrum WT. Spectrum WT has held Queer History night, Lavender Prom, a Valentine Lip Synch show, Queer Movie Night, and other events. Spectrum has at all times been free to conduct drag shows off campus as it wishes.

This Court stated in 2023 on the record then before it: “President Wendler’s action does not constitute ‘viewpoint discrimination’ because it does not discriminate based on ‘the specific motivating ideology or the opinion or perspective of the speaker’”. Mem Op. (ECF No. 59, at 17 n.24 (citing *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U. S. 819, 829 (1995))). The evidence at trial will confirm that conclusion. President Wendler did not discriminate against Spectrum based on viewpoint and will do so as to the proposed 2026 drag show.

**IV. SPECTRUM WT IS NOT THREATENED WITH IRREPARABLE HARM AS TO THE PROPOSED, BUT INDETERMINATE, APRIL 2026 DRAG SHOW.**

Though Spectrum WT recently submitted an online reservation for a drag show at Legacy Hall in April 2026, “[n]one of the details have yet been worked out” and the performers, costumes, music are all speculative. Fanelli Dep. 30: 1–31:24; 40:1–25. Of course, President Wendler has taken no action on the incomplete application. Spectrum WT remains free to conduct any drag

show it wants at any off-campus venue, including a new venue opened in 2024 near the WTAMU campus. On the evidence at trial, Plaintiff Spectrum cannot carry its burden to show it is threatened with irreparable harm by any action of President Wendler.

**V. THE PUBLIC INTEREST AND EQUITIES FAVOR DEFENDANT WENDLER.**

The public interest favors Defendant. The central public interest at stake in this case is the interest in furthering the educational mission and core values of WTAMU, and in the ability of public university presidents to exercise their judgment as to what uses of campus facilities best support the educational mission of the public institutions they lead. The Constitution does not mandate, as Spectrum claims, that universities host neo-Nazi rallies, and blackface shows. The public interest also lies in protecting minors from sexualized performances and gender ideology.<sup>1</sup> Spectrum has the burden of proving that “considering the balance of hardships between plaintiff and defendant, a remedy in equity is warranted.” *eBay, Inc. v. MercExchange, L.L.C.*, 547 U. S. 388, 391 (2006). On the trial record, Spectrum falls short of this requirement.

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<sup>1</sup> The trial evidence will show that minors, including K-12 high school students, regularly are enrolled at WTAMU. They have student IDs like other WTAMU students that do not identify their age. Their student IDs entitle them to attend on-campus events at Legacy Hall and elsewhere. Spectrum admits it would have allowed any WTAMU students with IDs to attend its 2023 drag show.



Date: January 12, 2026

Respectfully submitted.

KEN PAXTON  
Attorney General of Texas

/s/ David Bryant  
DAVID BRYANT  
Senior Special Counsel  
Tex. State Bar No. 03281500  
ATTORNEY IN CHARGE

BRENT WEBSTER  
First Assistant Attorney General

RALPH MOLINA  
Deputy First Assistant Attorney General

MUNERA AL-FUHAID  
Special Counsel  
Tex. State Bar No. 24094501

RYAN D. WALTERS  
Deputy Attorney General for Legal Strategy

ZACHARY BERG  
Special Counsel  
Tex. State Bar No. 24107706

RYAN G. KERCHER  
Chief, Special Litigation Division

ALEXIA K. BAKER  
Assistant Attorney General  
Texas State Bar No. 24149596

OFFICE OF THE ATTORNEY GENERAL  
P.O. Box 12548 (MC-009)  
Austin, Texas 78711-2548  
Tel.: (512) 463-2120  
Fax: (512) 320-0667  
david.bryant@oag.texas.gov  
munera.al-fuhaid@oag.texas.gov  
zachary.berg@oag.texas.gov

ATTORNEYS FOR DEFENDANT WALTER  
WENDLER,  
IN HIS OFFICIAL CAPACITY AS PRESIDENT OF  
WEST TEXAS A & M UNIVERSITY

### **CERTIFICATE OF SERVICE**

I hereby certify that on January 12, 2026, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notice of such filing to all registered CM/ECF users.

/s/ David Bryant  
DAVID BRYANT